

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3650 OF 2012

1. Kausa Education & Charitable Trust
through Queen Mary's High School &
Junior College, Public Charitable Trust
registered under the Bombay Public
Trust Act, 1950 having its office at
A/1103, Rekab Tower, E.S.Patanwala
Road, Ghodapdeo, Mumbai- 400 033.
2. Mr. Asgar Contractor,
Trustee of Kausa Education & Charitable
Trust, having his address
at A/1103, Rekab Tower,
E.S.Patanwala Road, Ghodapdeo,
Mumbai- 400 033.
3. Mrs. Saeeda Contractor,
Head Mistress,
Queen Mary's High School & Junior
College, Behind Tanwar Nagar,
1st Petrol Pump, KAUSA,
Mumbra- 400 612. ... Petitioners.

V/s.

1. Maharashtra State Information Commission,
Maharashtra Konkan Division Bench,
1st floor, C.B.D., Belapur, Navi Mumbai.
2. First Appellate Officer & Education
Officer (Secondary),
Office of Education Officer (Secondary)
Zilla Parishad, Thane.

3. Chief Commissioner of Information,
State Information Commission,
13th floor, New Administrative Building,
Opp. Mantralaya, Mumbai- 400 032.

5. Qazi Faridul Haque,
402, Mazida Manzil, Amrut Nagar,
Mumbra, District Thane 400 612.

... Respondents.

Shri Gaurav Joshi with Murtaza Federal, Shrinivas Bobde,
instructed by M/s. Federal & Rashmikant, Advocates for the
petitioner.

Shri Dhananjay B. Lonkar for respondent No.1.

Ms. M.S. Bane, "B" Panel counsel for respondents No. 2 & 3.

Ms. Deepali Deherkar, Advocate for respondent No.5.

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CORAM : B.P. DHARMADHIKARI, J.
RESERVED ON : 17th December 2012.
PRONOUNCED ON : 8th JANUARY 2013.

JUDGMENT :

Heard. By consent of parties, rule is made returnable
forthwith.

2. By this petition filed under Articles 226 and 227 of
the Constitution of India, petitioner No.1- an educational trust
through its school; one of its trustees; and Head Mistress of that
school have together questioned the order dated 5th May 2011
passed by the appellate authority in first appeal under the Right

to Information Act, 2005 (hereinafter referred to as “RTI Act” for short) and the latter order dated 10th February 2012 passed in further appeal by the State Information Commissioner.

3. The petitioners have pointed out the accepted position that the school run by the Trust is private unaided one and, therefore, it is not public authority to which provisions of RTI Act are applicable. The authorities have answered this issue in its favour and its concurrent findings have not been questioned by the respondent who sought information. The appellate authority, however, in the impugned order directed Education Officer (Secondary) to gather the information from the petitioners and to supply it to respondent No.5, an ex-employee of the petitioners. Thus, what could not have been done directly is sought to be achieved indirectly, thereby the powers or jurisdiction under the RTI Act are being exceeded & legal rights of the petitioner are violated. Learned counsel for the petitioners submits that the Head Mistress of the school had received a witness summons from the State Commission and,

accordingly, she had appeared on 20th September 2011. Hearing, however, was conducted on 16th December 2011 and, on that day, the petitioners were absent as no notice was issued to them of any such hearing. Leaned counsel urges thus, that the said order passed by the State Information Commissioner i.e. respondent No.1 in the present matter is without any opportunity and, therefore, in breach of principles of natural justice. He submits that the information directed is in relation to “third party” and is to be gathered also from a third party as defined in section 2(n) of RTI Act. The procedure as prescribed in section 11 of the RTI Act for that purpose has not been followed and on this count also the impugned order is unsustainable.

4. The provisions of section 2(n) defining “information” are read out to contend that its sweep is wide but then its impact is curtailed because of a narrower concept of “right to information” contained in section 2(g) thereof. This aspect has been totally lost sight of by the authorities. Powers of State Information Commissioner as laid down in section 19(8) are also

relied upon with submission that those powers do not envisage capacity to give direction to other authorities to take recourse to other enactments to coerce the petitioners to supply the necessary information. The direction by respondent No.1 to Education Officer that he should use his powers under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "1977 Act") is, therefore, urged to be without jurisdiction. By way of abundant precaution and in the alternative, it is added that entire information available with the petitioners has already been supplied to respondent No.5- employee. The information which is not available cannot be asked to be supplied under the RTI Act. Respondent No.5 is a dismissed employee who approached the School Tribunal in an appeal under section 9 of 1977 Act and claimed various documents/ information only to harass the present petitioners. Attention is also invited to the applications moved by him for the said purpose to show its illusive or vague nature. Learned counsel, in this background, prayed for allowing of petition.

5. The learned counsel appearing for respondent No.5 has, at the outset, stated that application seeking information dated 7th April 2011 moved by said respondent and filed at “Exh. N” with this writ petition is not being pressed. Respondent No.5 needed copy of the approval given to his employment by the Education Officer and, accordingly, by his first application dated 13th December 2010 the same was sought. Other relevant information to prosecute his grievance was sought for on 28th December 2010 from the Education Officer. Said information has still not been supplied and hence, respondent No.1 has rightly allowed the appeal. The information sought for is accessible by the Education Officer and, accordingly, a correct direction has been issued by that authority. The very same legal provisions pressed into service by the petitioners are relied upon to support that exercise. Unreported judgment of the Uttaranchal High Court in Writ Petition No.809/2010 dated 3rd June 2010 (*Anuj Public School v. State Information Commissioner*) is also relied upon to support the impugned order. Learned counsel submits that the Appeal adjudicating

authority has been empowered to ensure steps necessary to effectively implement RTI Act & ask the Education Officer to access/call requisite information with petitioners or to provide the same to it and then Education Officer is duty bound to supply it to the present respondent No.5.

6. It is urged that purpose for which information is sought is not decisive or relevant in the present matter but it is pointed out that respondent No.5 has succeeded in his appeal before the School Tribunal and his dismissal has been set aside. Learned counsel further contends that the petitioners were aware of the date of hearing and hence there is no question of violation of principles of natural justice. Prayer, therefore, is to dismiss the writ petition.

7. Thus, before this Court, the finding that provisions of RTI Act do not apply to the petitioner- establishment is not in dispute. The contention that respondent No.1, by directing the Education Officer (Secondary) to procure information from the

petitioners and then to supply it to respondent No.5, has done something which is prohibited by RTI Act and the other contention about denial of opportunity of hearing by said respondent are, therefore, to be evaluated. Rival contention about need of adherence to S. 11 relating to the "third party" procedure for procuring the information from these petitioners or any of them may deserve a look dependent upon the answer to this exercise. However, if provisions of S. 19 of RTI Act are held insufficient to clothe the appellate authority with power to issue the directions of nature / type as in present case, the complaint of breach of principles of natural justice by petitioner, may not assume much importance. Respective Counsel, therefore have addressed this Court at some length in that regard. If the said authorities are found not to possess such powers, then only other grievances as raised do not survive. Further course of action to be adopted by this Court therefore depends upon scope of S. 19(8) which calls for determination first.

8. The order of respondent No.1 dated 10th February

2012 assailed in this petition is in Marathi. This order in its last but one paragraph shows that the appellate authority has relied upon the order dated 5th May 2011 issued by respondent No.4- Chief Commissioner of Information and directed respondent No.3- Education Officer to use the provisions of 1977 Act to seek information from the petitioners and then to pass it on to respondent No.5. The petitioner's translation of this direction in English and use of words "Education Inspector (Secondary)" in it is, therefore, not correct. The words should have been "Education Officer (Secondary)". The provisions of section 19 of the RTI Act deal with appeals; and the powers of State Information Commissioner while deciding said appeals are prescribed in sub-section (8) clause (a). This sub-section enables the State Information Commissioner to require the public authority to take any such steps as may be necessary to secure compliance with the provisions of RTI Act. Sub-clause (i) then permits the said authority to achieve very same goal by providing access to information in a particular form. Main clause (a) is "general" in nature & ends with words "include". Its sub-clauses

(i) to (vi) show the mention of specific powers or steps which may be taken. Thus, this placement & arrangement reveals the legislative mandate that powers later specified in sub-clauses are not designed to restrict the wide field kept deliberately open for the appellate forums and not to encroach upon the general power to issue various types of directions under main clause. The stipulation of specific powers is without prejudice to generality of vast power conferred by S.19(8)(a) i.e. main clause. There is no reason to cut down sweep of this procedure aimed at effective implementation as it militates with its completeness within the RTI Act envisaged & achieved through overriding effect in S. 22 & bar of jurisdiction of civil court in S.23. All the steps/measures required to be adopted for achieving the purpose, object of & compliance with RTI Act, are therefore, open & permitted, and the appellate authority can issue direction to such public authority to take any of those steps as are suitable to coerce the persons having information to abide by directions issued under the RTI Act. Said steps giving teeth to it & intended at making the law effective, therefore, may include a direction to use other

powers available to such public authority i.e. conferred upon it under any other law like 1977 Act. The Education Officer (Secondary) is a public authority and has acted as first appeal authority also in the present matter. Statutorily, it is associated with administration and functioning of all recognized and approved schools due to & in accordance with the provisions of 1977 Act as also Secondary School Code. It has got various powers to monitor the functioning and standard of education in terms of these statutory instruments. For that purpose it can access the records of the petitioners. Here, overriding effect given to RTI Act vide its S. 22 also assumes significance. Hence, a direction by respondent No.1 in its order dated 10th February 2012 to respondent No.2 to use any of those powers for procuring information from the petitioners cannot be viewed as excessive. The contention that what is directly prohibited has been achieved indirectly through such a direction or course of action is, therefore, misconceived and unsustainable.

9. Full Bench of the Delhi High Court in AIR 2010 Delhi

159 -- "**Secretary General, Supreme Court of India v. Subhash Chandra Agarwal**" has observed:--

"60. The decisions cited by the learned Attorney General on the meaning of the words 'held' or 'control' are relating to property and cannot be relied upon in interpretation of the provisions of the Right to Information Act. The source of right to information does not emanate from the Right to Information Act. It is a right that emerges from the constitutional guarantees under Article 19(1)(a) as held by the Supreme Court in a catena of decisions. The Right to Information Act is not repository of the right to information. Its repository is the constitutional rights guaranteed under Article 19(1)(a). The Act is merely an instrument that lays down statutory procedure in the exercise of this right. Its overreaching purpose is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and to help the governors accountable to the governed. In construing such a statute, the Court ought to give to it the widest operation which its language will permit. The Court will also not readily read words which are not there and introduction of which will restrict the rights of citizens for whose benefit the statute is intended.

61. The words 'held by' or 'under the control of under Section 2(j) will include not only information under the legal control of the public authority but also all such information which is otherwise received or used or consciously retained by the public authority in the course of its functions and its official capacity. There are any number of examples where there is no legal obligation to provide information to public authorities, but where such information is provided, the same would be accessible under the Act. For example, registration of births, deaths, marriages, applications for election photo identity cards, ration cards, pan cards etc. The interpretation of the word 'held' suggested by the learned Attorney General, if accepted, would render the right to information totally ineffective."

10. In paragraph 44, this Full Bench of Delhi High Court, from the preamble of the RTI Act, also notes that it is passed because 'democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and hold Governments and their instrumentalities accountable to the governed'. It restricts the right to information to citizens vide Section 3. Citizen seeking

information need not give any reasons for such demand & there is no requirement of scrutiny into his locus standi. I find that when the procedure to exercise the right to information is statutorily prescribed & its breach is to be redressed exclusively by the “forums” created thereunder, the “execution” of such adjudicated entitlement against unwilling establishment by invoking all available legal avenues is the deliberate measure & an integral part of the scheme of RTI Act.

11. The learned counsel for the petitioners has also urged that though definition of “information” as contained in section 2(f) is comparatively wide, that scope is curtailed when RTI Act confers upon the persons like respondent No.5 right to information. He has urged that section 2(j) defining this phrase “right to information” is intended at controlling and narrowing wide sweep of section 2(f). Similarly, the petitioners are claiming themselves to be a third party as defined in section 2(l) of RTI Act. None of these contentions are addressed to by respondent No.1. Perusal of impugned appellate judgment

shows that Head Mistress working with petitioners i.e. petitioner No.3 had appeared before respondent No.1 on 20th September 2011 for giving evidence of the action taken on applications of respondent No.5. Hearing took place on 16th October 2011 and the impugned order records that on that day present respondent No.5 (appellant) was only present. This position has not been seriously disputed by respondent No.5. Respondent No.5 has not pointed out that there was any other notice or intimation to the petitioners to remain present for hearing on 16th October 2011. The submission of petitioners that out of documents demanded by respondent No.5 vide his two applications, available documents or information have been already supplied and remaining material is not available with it, therefore, does not find any consideration by respondent No.1. Issue whether copy of approval order sought for on 13th December 2010 by respondent No.5 is available with the petitioners or then, it is available with authorities granting approval i.e. respondent No.2, therefore, need not be looked into by this Court. Similarly, on 28th December 2012, respondent No.5 has demanded total nine

documents or information & respondent 5 has stated that the information or documents in relation to serial Nos.1, 2, 3, 7, 8 and 9 are still not received by him. Whether this information or document/s is available with the petitioners or not can also be looked into by respondent No.1 after extending them an opportunity of hearing. It is not necessary for this Court to pronounce on it as petitioners have not been given necessary opportunity of hearing before passing of impugned order.

12. Perusal of judgment of Uttaranchal High Court in ***Anuj Public School vs. State Information Commissioner*** (supra) reveals that the learned single Judge has issued direction to the petitioners therein to give information not covered under section 8 of the RTI Act within two weeks. This judgment also considers situation of private institutes in the light of section 11 of the RTI Act. Its bearing in the matter, if any; can be pointed out by the parties to respondent No.1.

13. In the light of this discussion, it is held that the

impugned order to the extent indicated above passed without hearing the petitioners is unsustainable. The said order dated 10th February 2012 is, accordingly, quashed and set aside. The proceedings in Appeal No. KR-1323/2011 are restored back to the file of respondent No.1 for fresh hearing and consideration. Petitioners as also respondent No.5 are directed to appear before respondent No.1 on 12th February 2013 and to abide by its further instructions in the matter. The said authority shall attempt to decide the appeal finally as early as possible.

14. Petition is, thus, partly allowed and disposed of. No costs.

(B.P. DHARMADHIKARI, J.)

Sanjay Nanoskar, P.S.